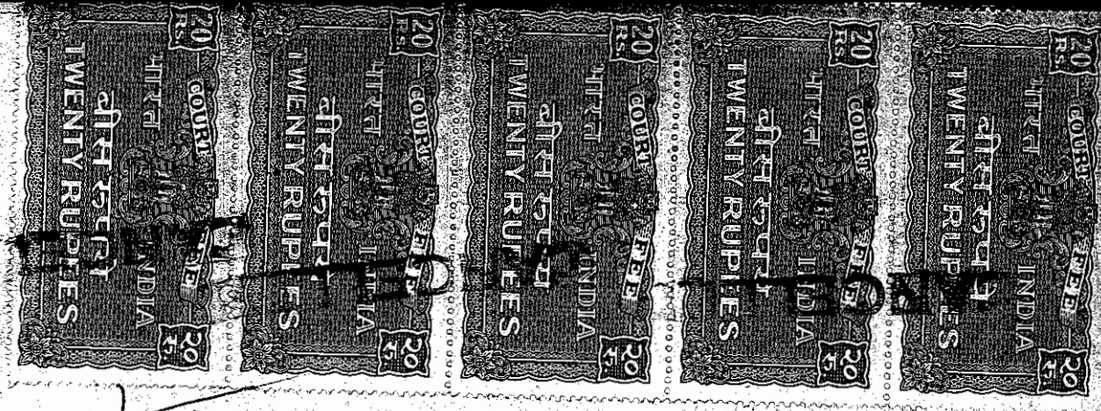

IN THEHIGH COURT OF JUDICATURE AT JABALPUR

(2)

WRIT PETITION NO: 6106 /2000

PETITIONER : Deo Kumar Choudhary,
S/o. late Shri C.B. Choudhary,
aged about 29 years,
R/o. Village & Post- Baramkela,
Tehsil- Sarangarh, Distt. Raigarh(MP).

VERSUS

RESPONDENT : District Co-operative Central Bank
Ltd.; Through: Its Managing, Raigarh (MP).

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR WRIT, ORDERS OR DIRECTIONS IN THE NATURE OF CERTIORARI, MANDAMUS ETC. AND FOR FURTHER APPRORIATE DIRECTIONS:

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HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR

W.P.No.6106/2000

Deo Kumar

Versus

District Co-operative Central Bank Ltd.

Before: Hon'ble Mr. W.A.Shishak, Chief Justice

Present:

Shri Raj Kamal Singh, Advocate - counsel for petitioner.
Shri Manindra Shrivastava, Adv., - counsel for the respdts.

ORDER

1) The petitioner was given appointment on compassionate ground after the death of his father in harness vide order dated 16.09.1997. The petitioner joined as L.D.C. on 11.11.1997. In the matter of employment under Zilla Sahakari Kendriya Bank Karmachari Seva Niyam, there is a period of probation for one year. There is a further provision that in some

(5)

cases a Staff Sub-Committee may decide to allow further period of one year and no more. The performance and conduct of the writ petitioner was found to be good from the date he joined on 11.11.1997 for a full period of one year as is recorded in Annexure R-5 dated 3.2.2000 filed by the respondents. Though there was a proposal to give extension in terms of Annexure R-5 there was no order of extension issued by the Competent Authority. The petitioner continued in his service as L.D.C. It may be stated that the petitioner was given appointment as L.D.C. on compassionate ground in the scale of pay of Rs.975-1700/- vide order dated 16.09.1997. While continuing as L.D.C. the impugned order of termination came to be issued on 04.10.2000 on the ground that the conduct and the performance of the petitioner were not found to be satisfactory. It may be stated that in terms of Annexure R-6 filed by the respondents the order of termination was issued mainly because the writ petitioner committed misconduct by absenting himself from duty for 151 days during the period of employment.

2) According to Shri Raj Kamal Singh, learned counsel for the petitioner, the calculation of the number of days during which the writ petitioner is said to have been absent is incorrect.

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It is submitted by Shri Raj Kamal Singh that as far as 1997 is concerned there was no absence of the writ petitioner and the performance was also good. It is further submitted that though the petitioner is said to have been absent for 98 days i.e. during the second year of his employment, it has been certified that the performance of the writ petitioner was good. In 1999 according to the learned counsel for the petitioner, the writ petitioner was said to have been absent for 32 days in terms of document Annexure R-6. Further, it is also submitted that in the year 2000, the petitioner is also said to have been absent for 12 days that also in terms of document Annexure R-6.

3) Supporting the order of termination, Shri Manindra Shrivastava, learned counsel for the respondents submits that, there is no infirmity in the order of termination inasmuch as the performance of the writ petitioner was found to be poor and it was also found that the petitioner had committed misconduct by absenting himself from duty for several days. It is also further submitted that there is no stigma in issuing the order of termination inasmuch as the order of termination was issued on the ground of misconduct committed by the writ petitioner during the period of probation. Therefore, Shri Manindra Shrivastava submits that infact the services of the writ

petitioner were terminated mainly on the ground of unsatisfactory performance of the writ petitioner.

4) ~~Therefore~~, Shri Raj Kamal Singh submits that infact document Annexure R-6 gives the details of the days of absence of the writ petitioner and it is this document which has been relied upon by the respondents in terminating the services of the writ petitioner. It is further submitted by Shri Raj Kamal Singh that in terms of Rule 15 of the relevant Service Rules, the period of probation could not be extended beyond two years. It is further submitted that in terms of document Annexure R-5 dated 3.2.2000, it is clear that the matter was considered for further extension of the period of probation and also for regularization after calling for some further report. It is therefore submitted that though there was a discussion about extension of period of probation there was no order of extension issued by the Competent Authority.

5) In this view of the matter it is submitted that the period of probation in the present case should be deemed to have ended after the expiry of one year. Be that as it may, even assuming that the petitioner was allowed to serve for a further period on probation, such extended period of

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probation would have expired in November, 1999, whereas the order of termination was issued on 4.10.2000.

6) Another very interesting question that I may examine in the present case is as regards the manner in which the writ petitioner was given appointment. As stated above, the writ petitioner was given appointment on compassionate ground because his father died in harness. Therefore, in my view it is necessary to keep in mind that once the petitioner was otherwise eligible to hold the post of L.D.C. being a graduate, I am of the opinion that even the period of probation could not have been made applicable to the petitioner ~~or~~ inasmuch as to do so is likely to defeat the very purpose of the scheme of giving employment on compassionate ground. It must be borne in mind that such appointment is given in order to alleviate the economic hardship of the family wherein the bread-winner dies while in office. In the present case, even assuming that the petitioner was employed on probation initially for a period of one year, there was absolutely no complaint against him as far as his performance is concerned and further there was no order of extension of the period of probation. In my view, the manner of employment given on compassionate ground should be taken to

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be of regular nature though initially the appointment is made temporarily.

7) Upon careful perusal of the averments made in the pleadings and after hearing Shri Raj Kamal Singh, learned counsel for the petitioner as well as Shri Manindra Shrivastava, learned counsel for the respondents, I hold that the order of termination is not justifiable in the facts and circumstances of the present case.

8) In the result this petition is allowed. The petitioner shall be reinstated forthwith i.e. on 01st of November, 2001. Further, in the peculiar facts and circumstances of the case, the petitioner shall not be entitled to back wages from the date of termination till 31st of October, 2001. I may further make it clear that at least continuity of service shall be maintained. Consequently impugned order of termination dated 04.10.2000 is set aside.

9) The petition is disposed of.

Sd/-
Chief Justice

01.11.2001